

## **TITLE 327 WATER POLLUTION CONTROL BOARD**

### **LSA Document #01-96**

#### **SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from December 1, 2002, through December 21, 2002, on IDEM's proposed rule language. IDEM received comments from the following parties:

Indiana Association of Cities and Towns (IACT)  
Clark County Soil and Water Conservation District (CCSWCD)  
Indiana Farm Bureau Inc. (IFBI)  
Clark County Drainage Board (CCDB)

Following is a summary of the comments received and IDEM's responses thereto.

#### **327 IAC 5-4-6**

*Comment:* 327 IAC 5-4-6(a) gives the commissioner of IDEM authority to determine that storm water discharges are subject to individual NPDES permitting requirements if she determines that such discharges violate water quality standards, contribute significant pollution to a water or to a regulated MS4 conveyance, or meet the conditions in 327 IAC 15-2-9(b). Criteria for such a decision should be measured objectively, therefore language such as, “the commissioner determines,” must be stricken. (IACT)

*Response:* Under article 5, IDEM is given the authority to determine when NPDES permits are necessary. IDEM, as the state’s NPDES permitting authority, is tasked with setting permitting applicability criteria, determining permit conditions, and ensuring, via permits, that water quality in the state is either maintained or improved upon to meet the water quality standards set forth in 327 IAC 2-1-6 and 327 IAC 2-1.5-8. The rule language in 327 IAC 5-4-6(a) was not changed, because, per the tasks set forth for the agency, the commissioner of IDEM must maintain the ultimate authority to determine the appropriate type of NPDES permit based on gathered relevant information.

#### **327 IAC 15-13**

*Comment:* 327 IAC 15-13-3(b) is worded too broadly in that an area will be designated as an MS4 entity even if it does not meet the designation criteria if “other environmental programs are not adequately protecting water quality”, without an explanation as what other environmental programs are being referred to or what constitutes inadequate protection of water quality. (IACT) 01-96 RTC 3<sup>rd</sup> comment period

*Response:* Because many water quality problems are “site specific”, rule language addressing each scenario is not possible. Rule language should be generic enough to have a wide applicability to take into account as many of these specific scenarios as possible. The rule language in 327 IAC 15-13-3(b) was not changed, but a clearer explanation of “other environmental programs are not adequately protecting water quality” will be addressed in the accompanying guidance document.

*Comment:* 327 IAC 15-13-3(d) requires IDEM to provide written notice to MS4 entities that meet the designation criteria, but does not state the consequences of IDEM’s failure to do so. A reference should be made to 327 IAC 15-13-9, which explains these consequences. (IACT)

*Response:* For those situations when IDEM does not provide notification, the conditions of 327 IAC 15-13-9 should still apply. The rule language in 327 IAC 15-13-3(d) was revised to provide a reference to 327 IAC 15-13-9.

*Comment:* 327 IAC 15-13-5(71) uses the term “negatively impacts” in defining “significant contributor of pollutants” but fails to define that term. Since “negatively impacts” is a broad term, it could bring in an entity with minimal discharge under the definition of “significant contributor of pollutants”. (IACT)

*Response:* IDEM staff asked IACT to provide suggested rule language changes to clarify the term “negatively impacts.” To date, no rule language changes have been made. However, the intent of this definition could be clarified in the accompanying guidance document.

*Comment:* At 327 IAC 15-13-5(71), the phrase “capability to be consistent” as used in defining “significant contributor of pollutants” should be replaced with language such as “ability to comply”, so as to clarify the meaning of the sentence. (IACT)

*Response:* For clarity and intent, the rule language in 327 IAC 15-13-5(71) was revised with the suggested language replacement.

*Comment:* 327 IAC 15-13-9(d) authorizes IDEM to deny coverage under Rule 13 based on a “review of the NOI letter or other information.” This is another avenue for IDEM to require permitting under the more stringent individual NPDES permit, though objectively the permittee qualifies for a general permit. (IACT)

*Response:* Due to many factors that may influence eligibility under Rule 13, IDEM must retain the authority to require individual NPDES storm water permits. Eligibility for coverage

under a general NPDES permit is contingent upon conditions and available data relevant to the applicant and the applicant's MS4 area. In some situations, the appropriateness of a general permit can be determined during the review of the NOI letter and other submitted information, especially related to receiving waters. If, for example, data is collected at some point in the future which indicates that specific parameter concentrations or loadings must be met by the applicant's storm water discharges, then the general storm water permit would not be adequate to address the concentration or loading limitations. An individual storm water permit would be more appropriate. The rule language was slightly changed to reflect the type of information that would be reviewed by IDEM, and the example described in this response can be modified and added to the accompanying guidance document to clarify the intent.

*Comment:* Several provisions in Rule 13 require that an MS4 entity respond to a notice deficiency (NOD) within thirty (30) days of the date on the NOD. Similarly, in 327 IAC 15-13-9(e), if an entity is notified of its MS4 status after the effective date of Rule 13, it has one year from the date on IDEM's written notice to submit the application. The language should be revised so that the date of receipt and not the date appearing on the NOD or written notice be the start of the response period. (IACT)

*Response:* IDEM does not anticipate mailing NOD, NOS, or NOT letters via certified mail. Therefore, IDEM does not have the ability to automatically determine the date the letters are received by the MS4 entity. For compliance tracking, the date on the letters will be the date the letters are mailed, and this date will be the compliance tracking starting date. The rule language was not changed.

*Comment:* Regarding the mapping requirements in 327 IAC 15-13-14(b)(2), they feel that they are prohibitively expensive with the threshold of twelve (12) inch pipes and two (2) foot bottom width as compared to EPA stated goals of being able to show "major pipes, outfalls and topography". They believe that this threshold is an arbitrary and indefensible one. They recommend that the board consider increasing the pipe threshold from twelve (12) to twenty-four (24) inches during the first five-year permit term. This would allow the designated MS4s to focus their resources on establishing a detailed base map of their most significant infrastructure. They also recommend that mapping requirements be linked to the size of the drainage area to help maximize and prioritize the use of mapping funds. They believe this approach would be a pragmatic one and could help account for variations between MS4s and their infrastructure. (CCSWCD, IFBI, CCDB)

*Response:* IDEM has developed the mapping criteria in the rule with input from regulated stakeholders. The twelve (12) inch diameter pipe and two (2) foot bottom width ditch criteria are not arbitrary, and were the result of external stakeholder suggested language. The consensus reached by external stakeholders during the rule development workgroup public meetings was that these criteria were reasonable for the first five-year permit term, and would enable stakeholders to prioritize resources. The impression IDEM obtained from several communities is

that communities will actually include smaller diameter pipes (possibly six (6) inch diameter or greater) in their mapping for the first five years.

The storm water conveyance system does not need to be surveyed. Using coordinates for mapping the entire storm water conveyance system is not required. Because the system map is ultimately intended as a tool for understanding storm water flow patterns and identifying current and future pollutant sources, regulated entities can utilize existing mapped depictions of their system. The only coordinate mapping requirement is for the actual storm water outfall locations, or the points at which storm water discharges enter an identified receiving water.

As for linking the mapping requirement to a drainage area's size, IDEM feels this suggestion would be too arbitrary. All conveyances are connected to a drainage area, and dividing the conveyances into smaller drainage areas, so as to not require mapping, could be very arbitrary. IDEM feels it would be too difficult, in many situations, to agree upon the size of a drainage area, when determining if the drainage area should be mapped in the first five years of the permit term. If entity-specific situations need further explanation (such as mapping driveway culverts that connect to drainage ditches), the guidance document accompanying this rule can provide examples of IDEM's rule interpretation. The rule language was not changed.

*Comment:* 327 IAC 15-13-15(g) and 327 IAC 15-13-16(d) requires MS4 personnel to participate in approved annual training. IDEM needs to ensure that a list of approved courses is available or a mechanism for obtaining approval is put into place. (IACT)

*Response:* The required training is not part of a certification program, since there are no certifications required to be an MS4 operator. The annual training must address relevance to storm water quality and the MS4 area's SWQMP. Typically, this training will be specific to the MS4 entity, because of differences in local conditions between MS4 entities and the expected variability of the SWQMPs. Therefore, because of its general nature to meet the needs of a wider audience, training offered on a state or federal level may not be the most appropriate type of training to each MS4 entity. IDEM and IDNR staff may schedule and participate in training sessions, but a list of approved courses may not be available. If an MS4 entity has a training session that contains relevance to their SWQMP, their training will be deemed approvable. If IDEM or IDNR create a listing of approved courses, the listing will be available to the MS4 entities.

*Comment:* 327 IAC 15-13-19(e) requires MS4 entities to produce a baseline characterization report states in subsection (a) that the MS4 operator shall evaluate the data in the baseline characterization report to determine which areas or discharge points are in need of additional water quality measures. In section 7, the term "additional water quality measures" is used but not defined. (IACT)

*Response:* The term "additional water quality measures" is intentionally vague to allow for more flexibility in its interpretation. Some examples of these measures are best management

practices, and source identification and minimization. With the current rule language, the decision to determine what type of measure will be most cost and technologically effective and beneficial remains with the MS4 entity. The rule language was not changed, and the unclear term will be better defined in the accompanying guidance document.

*Comment:* 327 IAC 15-13-20 allows IDEM to terminate general permit coverage and require that an MS4 entity obtain an individual permit for two reasons including, “if it is determined that a general permit is not adequate to protect water quality.” (IACT)

*Response:* IDEM, as the state NPDES permitting authority, must maintain their authority to determine the appropriateness of general and individual permits. If water quality is not being adequately protected or is not sufficient to meet state standards, IDEM must be able to require the more specific requirements found in an individual storm water permit. The rule language was not changed.

*Comment:* 327 IAC 15-13-22(d) requires the Department of Natural Resources or its designated representatives to provide credentials before inspecting an MS4 entity. A similar requirement should be imposed on IDEM inspectors and reflected in subsections (a) and (f). (IACT)

*Response:* Although IDEM already has the authority to inspect after providing proper credentials by referencing 327 IAC 15-4 (which is in 327 IAC 15-13-21), the rule language in 327 IAC 15-13-22(d) was revised to include IDEM inspectors. Due to the addition in subsection (d), no changes were made to subsections (a) and (f).